

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on March 19, 2003 at 9:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: Rep. Christopher Harris (D)
Rep. John Parker (D)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pamela Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. The time stamp for these minutes appears at the end of the content it refers to.

Committee Business Summary:

Hearing & Date Posted: SB 364, SB 394, SB 398, 3/12/2003

Executive Action: SB 398-Be Concurred In and Place on
Consent Calendar
SB 35-Be Concurred In as Amended
SB 57-Be Concurred In as Amended

HEARING ON SB 394

Sponsor: SEN. GARY PERRY, SD 16, Manhattan, Montana

Opening Statement by Sponsor:

SEN. PERRY opened the hearing on SB 394 by stating to the Committee that what is important is: "The drive for truth and justice, searching for truth and to serve all and not a few."

SEN. PERRY offered an amendment to this bill and then proceeded to give testimony to the Committee regarding three personal stories that involved him, his family and business. The Senator spoke of Rule 11 and Rule 68 as it relates to SB 394. He also spoke of how the English practice their own version of the law called "English Law" and how it currently compares with what we practice in this country, especially in the state of Montana.

EXHIBIT(juh58a01)

EXHIBIT(juh58a02)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 400}

Proponents' Testimony:

Charles Brooks, Billings Chamber of Commerce, spoke in favor of SB 394 and related his own personal story to the Committee.

{Tape: 1; Side: A; Approx. Time Counter: 400 - 432}

Roger Halver, Montana Association of Realtors, spoke in support of SB 394. He referred to the 21 co-sponsors of the bill and stated that this reflects the will of the people. **Mr. Halver** then stated that when SB 394 was heard in the Senate for second reading, the bill was passed 32-18 and on third reading; 30-20.

{Tape: 1; Side: A; Approx. Time Counter: 432 - 464}

Ellen Engstedt, Montana Wood Products Association, rose in support of SB 394.

{Tape: 1; Side: A; Approx. Time Counter: 464 - 481}

Don Allen, Self, spoke in favor of SB 394.

{Tape: 1; Side: A; Approx. Time Counter: 481 - 500}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 15}

Bob McLees, McLees Incorporated, spoke in favor of SB 394.

{Tape: 1; Side: B; Approx. Time Counter: 15 - 51}

Riley Johnson, NFIB, spoke in favor of SB 394 and stated to the Committee that the estimated cost of an average lawsuit is \$50,000. His organization endorses the "loser pay" system.

{Tape: 1; Side: B; Approx. Time Counter: 51 - 123}

Opponents' Testimony:

John Alke, Montana Defense Trial Lawyers, rose in opposition to SB 394. He stated that if this bill is in statute, his clients will pay more in suits, there will be more litigation and it will affect the "body politic." He further stated that the plaintiffs always receive attorney's fees in current Montana statute. **Mr. Alke** stated: "The proponents are pursuing an image."

EXHIBIT(juh58a03)

{Tape: 1; Side: B; Approx. Time Counter: 123 - 279}

Al Smith, Montana Trial Lawyers Association, stated to the Committee that with this statute; litigation will increase and become more attractive. He referred to the statement of the sponsor and stated that the English are moving away from their own "English Law."

{Tape: 1; Side: B; Approx. Time Counter: 279 - 309}

Ron Ashabraner, State Farm Insurance, stated to the Committee that his organization contends that this bill would do the opposite of what is intended. This bill would flood the courts with frivolous lawsuits.

{Tape: 1; Side: B; Approx. Time Counter: 309 - 333}

Bob Worthington, Montana Malpractice Insurance Association, rose in opposition to this bill.

{Tape: 1; Side: B; Approx. Time Counter: 333 - 353}

Norm Grosfield, Attorney, spoke to the Committee about the clients that he represents in legal matters. He stated that if juries award a small amount, even \$1, the legal fees are then to be included in the lawsuit awards. He further claimed that England does not use "English Law" but a socialized type of law. **Mr. Grosfield** stated that if this bill were to pass, the legal system would be removed from the middle class of people.

{Tape: 1; Side: B; Approx. Time Counter: 353 - 414}

Ron Waterman, Attorney, stated to the Committee that Rule 11 sanctions are in the federal system and that frivolous lawsuits are already addressed there. Mr. Waterman believes that this bill; "loser pay," will increase the intensity of lawsuits.

{Tape: 1; Side: B; Approx. Time Counter: 414 - 464}

Aiden Myhre, Montana Chamber of Commerce, rose in opposition to SB 394. Ms. Myhre and the organization she represents contend that if this bill were to pass, litigation would increase.

{Tape: 1; Side: B; Approx. Time Counter: 464 - 500}

Anne Hedges, Montana Environmental Information Center, spoke in opposition to this bill and inquired if the Committee had a Fiscal Note for this bill as she felt that would be relevant information.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 17}

Gordon Morris, Montana Association of Countys, rose in opposition to SB 394.

{Tape: 2; Side: A; Approx. Time Counter: 17 - 20}

Steve Wade, Burlington Northern/Santa Fe Railroad, rose in opposition to SB 394.

{Tape: 2; Side: A; Approx. Time Counter: 20 - 24}

Dwight Easton, Farmers Insurance, rose in opposition to SB 394.

{Tape: 2; Side: A; Approx. Time Counter: 24 - 35}

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

SEN. PERRY informed the Committee that this bill passed out of the Senate Judiciary with a 5-4 vote. He stated that the "loser pay" option is the best deterrent for frivolous lawsuits.

{Tape: 2; Side: A; Approx. Time Counter: 35 - 120}

HEARING ON SB 364

Sponsor: **SEN. MIKE COONEY, SD 26, Helena, Montana**

Opening Statement by Sponsor:

SEN. COONEY opened the hearing on SB 364 by stating that this bill will address the issue of manufacturing or distribution of dangerous drugs and that it is a form of child abuse. He further stated that 80% of abuse and neglect cases involve parents who use drugs.

{Tape: 2; Side: A; Approx. Time Counter: 120 - 150}

Proponents' Testimony:

Phyllis MacMillan, Self, rose in strong support of SB 364. Ms. MacMillan informed the Committee about her attendance at a seminar that addressed the issue of Drug Endangered Children (DEC). The current law that SB 364 would address states that children "can be at risk" and she contends that it should be "are at risk."

EXHIBIT (juh58a04)

EXHIBIT (juh58a05)

{Tape: 2; Side: A; Approx. Time Counter: 150 - 226}

Sara Lipscomb, Montana Council of Families, spoke to the Committee about the related medical problems children may suffer from exposure to these toxic substances. She also stated that one pound of "meth" manufacturing produces eight pounds of toxic waste.

EXHIBIT (juh58a06)

EXHIBIT (juh58a07)

EXHIBIT (juh58a08)

EXHIBIT(juh58a09)

{Tape: 2; Side: A; Approx. Time Counter: 226 - 392}

Jean Branscum, Governor's Office, stated to the Committee that parents must be held accountable for this activity.

{Tape: 2; Side: A; Approx. Time Counter: 292 - 334}

Mike Batista, State of Montana, Department of Justice, spoke to the Committee about a child he encountered when in the course of his work. He also spoke about the dangers his department faces when entering a home where the parents are involved in this illegal activity. Finally, **Mr. Batista** spoke of the parent's lack of ability to care for these children in these types of situations.

{Tape: 2; Side: A; Approx. Time Counter: 334 - 395}

Shirley Brown, State of Montana, Department of Public Health and Human Services, rose in support of this bill and stated that the courts need the clarification that this bill would provide. Ms. Brown then informed the Committee about the procedures followed when her department receives a call involving a "meth" lab and how the children are interacted with by the professionals answering the call.

{Tape: 2; Side: A; Approx. Time Counter: 395 - 472}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. LANGE, NOENNIG, CLARK, STOKER, NEWMAN, SHOCKLEY asked numerous questions of the sponsor, Mr. Batista, Ms. Lipscomb, and Sen. Cromley(who was in the audience)about why distribution was not included in the bill, the exposure language and whether just exposure constitutes abuse and neglect. Also asked was the growing of illegal drugs, i.e.; marijuana. More questions were asked regarding weapons in the homes where children are, the ingestion of cocaine and/or marijuana and the ability of these parents to properly parent their children in these type of circumstances.

{Tape: 2; Side: A; Approx. Time Counter: 472 - 500}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 315}

Closing by Sponsor:

SEN. COONEY closed the hearing on SB 364 by stating to the Committee that "meth" is a problem that continues to grow in this state and more children are being exposed and harmed by this situation. The Senator continued by telling a story to the Committee about a child who died from the ingestion of marijuana.

{Tape: 2; Side: B; Approx. Time Counter: 315 - 383}

HEARING ON SB 398

Sponsor: **SEN. BRENT CROMLEY, SD 9, Billings, Montana**

Opening Statement by Sponsor:

SEN. CROMLEY opened the hearing on SB 398 by stating that this bill will make a minor change in the statute by allowing background "checks" to be done with the FBI for new attorneys in the state.

{Tape: 2; Side: B; Approx. Time Counter: 383 - 414}

Proponents' Testimony:

Betsy Brandborg, State Bar of Montana, spoke in support of SB 398.

EXHIBIT (juh58a10)

{Tape: 2; Side: B; Approx. Time Counter: 414 - 446}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

SEN. CROMLEY closed the hearing on SB 398.

{Tape: 2; Side: B; Approx. Time Counter: 446 - 500}

EXECUTIVE ACTION ON SB 398

Motion/Vote: REP. GUTSCHE moved that SB 398 BE CONCURRED IN.
Motion carried unanimously. (voice vote)
(REP. CLARK has permanent proxy for REPS. PARKER and HARRIS.)

Motion/Vote: REP. GUTSCHE moved SB 398 be PLACED ON THE CONSENT
CALENDAR. Motion carried unanimously. (voice vote)
(REP. CLARK has permanent proxy for REPS. PARKER and HARRIS.)

{Tape: 3; Side: A; Approx. Time Counter: 0 - 10}

The Committee then discussed Executive Action on SB 364 and SB
394; with none being taken.

{Tape: 3; Side: A; Approx. Time Counter: 10 - 32}

EXECUTIVE ACTION ON SB 57

Motion: REP. NOENNIG moved that SB 57 BE CONCURRED IN.

Motion: REP. NOENNIG moved that SB 57 BE AMENDED.

EXHIBIT(juh58a11)

Discussion:

REP. NOENNIG discussed the bill and the amendment proposed as it
refers to the definition of mental defect and mental disorder
aspect.

Vote: Motion that SB 57 BE AMENDED carried unanimously.
(voice vote) (REP. CLARK has permanent proxy for REPS. PARKER and
HARRIS.)

Motion/Vote: REP. GUTSCHE moved that SB 57 BE CONCURRED IN AS
AMENDED. Motion carried unanimously. (voice vote)
(REP. CLARK has permanent proxy for REPS. PARKER and HARRIS.)

{Tape: 3; Side: A; Approx. Time Counter: 32 - 263}

EXECUTIVE ACTION ON SB 35

Motion: REP. NOENNIG moved that SB 35 BE CONCURRED IN.

Motion: REP. LANGE moved that SB 35 BE AMENDED.

Discussion:

REP. LANGE proposed an amendment referring to the word "residential" being inserted, with discussion following by Committee members.

Vote: Motion that SB 35 BE AMENDED carried unanimously. (voice vote) (REP. GALLUS voting by proxy) (REP. CLARK has permanent proxy for REPS. HARRIS and PARKER)

Motion/Vote: REP. LANGE moved that SB 35 BE CONCURRED IN AS AMENDED. Motion carried unanimously. (voice vote) (REP. GALLUS voting by proxy) (REP. CLARK has permanent proxy for REPS. HARRIS and PARKER.)

{Tape: 3; Side: A; Approx. Time Counter: 263 - 500}

{Tape: 3; Side: B; Approx. Time Counter: 0 - 50}

ADJOURNMENT

Adjournment: 11:35 A.M.

REP. JIM SHOCKLEY, Chairman

PAMELA SCHINDLER, Secretary

JS/PS

EXHIBIT (juh58aad)